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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1982
No. _____

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE OF NEW JERSEY,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether a state statute requiring delivery of a written notice of determination on a claim for unemployment compensation violates the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States when applied to a claimant who is unable to speak or read English under circumstances where the state has created a bilingual notice to be distributed to said claimants and has failed to provide the same to the Appellant.

2. Does the State of New Jersey's refusal to provide bilingual notice to Spanish speaking claimants in unemployment compensation cases, where such notices have been created, violate 42 U.S.C. §2000d and regulations promulgated thereunder?

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Other Authority

U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population and Housing, Final Population and Housing Counts (1971), and 1980 Census of Population and Housing, Final Population and Housing Counts (1981) and 1980 Census of Population and Housing, Preliminary Reports (1980) where final counts have not yet been published.....	10,13

OPINIONS BELOW

The opinion of the New Jersey Supreme Court entered April 26, 1982 and the opinion of the New Jersey Superior Court, Appellate Division, are set out in the Appendix hereto.

The opinion of the New Jersey Supreme Court is reported at 89, N.J. 41, 444 A2d 1075 (1982). The opinion of the New Jersey Superior Court, Appellate Division, is reported at 176 N.J. Super. 493, 423 A2d 1006 (1980). The order of the Board of Review dated November 8, 1979 is not reported. It is reprinted in the Appendix hereto See, p. 37-A infra.

JURISDICTION

This appeal from a decision of the New Jersey Supreme Court, affirming the denial of unemployment compensation, questions the validity of N.J.S.A. 43:21-6(b)(1) as applied in this case on the ground that it denies the Appellant her right of procedural due process guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The judgment of the Supreme Court of New Jersey was entered on April 26, 1982. Notice of Appeal to this Court was duly filed in the Supreme Court of New Jersey on July 26, 1982.

This appeal is being docketed in this Court within 90 days from the date of entry of the judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

CONSTITUTIONAL PROVISION STATUTES AND FEDERAL REGULATIONS INVOLVED

Fourteenth Amendment, Section 1, United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §2000d:

> No person in the United States shall, on the ground of race, color, or natural origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

N.J.S.A. 43:21-6(b)(1) [In pertinent part]:

> The deputy shall promptly make an initial determination based upon the available information. The initial determination shall show the weekly benefit amount payable, the maximum duration of benefits with respect to the employer to whom the determination relates, and also shall show whether the claimant is ineligible or disqualified for benefits under the initial determination. The claimant and the employer whose account may be charged for benefits payable pursuant to said determination shall be promptly notified thereof.
>
> Unless the claimant or any interested party within 7 calendar days after delivery of notification of an initial determination or within 10 calendar days after such notification was mailed to his or their last-known address and addresses, files an appeal from such decision, such decision shall be final...

[The statute is reprinted in its entirety in the Appendix at pp. 42-A and 43-A, infra.]

29 C.F.R. 31.3:

(b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the programs;

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program shall take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

STATEMENT OF THE CASE

The Appellant was employed by Korvettes, Inc. for over six years as a garment labeler at their store in Bayonne, New Jersey. When her employment ceased on September 7, 1979, she sought unemployment compensation from the Appellee by filing a claim at the South Newark (N.J.) Claims Office.

On September 25, 1979, Appellant was personally served with a Notice of Determination at the claims office denying her claim on the grounds that she had left work voluntarily. The Notice of Determination was written solely in English. The worker who provided her with the written notice spoke only English.

Appellant, who neither speaks nor reads English, had no knowledge of the content of the determination. She therefore sought to have it translated. On October 5, 1979 she succeeded in having the Notice of Determination translated by a local community agency. Immediately thereupon, with the aid of the agency, Appellant filed a Notice of Appeal from denial of benefits. This occurred ten (10) days Appellant had received the Notice of Determination.

On October 17, 1979 the Appeal Tribunal dismissed the appeal because the notice had not been filed within seven (7) days after its service upon the Appellant, as required by N.J.S.A. 43:21-6(b)(1).

Appellant next appealed to the Board of Review, requesting a reversal of the Appeal Tribunal's order of dismissal and a hearing on the merits of her claim. It was at this point that Appellant first obtained counsel.

It was also the first time the Federal Constitutional question was raised.

The Board of Review dismissed Appellant's appeal and she timely filed and perfected an appeal to the Superior Court of New Jersey, Appellate Division.

On December 2, 1980, in a per curiam opinion, the Appellate Court affirmed the decision of the Board of Review. In doing so, it rejected the argument that:

> "...notice cannot be imputed to a claimant for the purpose of the statutory time period unless that person has been served with a notice written in a language which the person so served can read or in the alternative, unless the Division causes the notice to be read to the claimant in a language which the claimant understands." (See, p.36-A, infra)

The Court found no violation of the Federal Constitution or the Civil Rights Act. Furthermore, the Court indicated that the conduct did not offend its "sense of fair play". Id.

Appellant docketed a Notice of Appeal in the Supreme Court of New Jersey on December 29, 1980. It was at this time that Appellant's attorney became aware that bilingual forms had been created by the State; one of which was a bilingual Notice of Determination. These forms were in the possession of the New Jersey Department of Labor and Industry, but had not been distributed to the Appellant.

On February 20, 1981 a motion to supplement the appellate record with copies of the aforementioned forms and a request for an interlocutory injunction demanding that the State distribute such forms forthwith was denied. The forms were later made part of the record through an admission of counsel at oral argument and a copy of the

form notice of determination can be found within. See, p.44-A

On April 26, 1982 the New Jersey Supreme Court affirmed the Appellate Division holding, finding that even under circumstances where the State Department of Labor and Industry has developed a bilingual version of the Notice of Determination; "...for use in the cases of claimants who speak and understand Spanish and are deficient in English language skills" the notice given to the Appellant satisfies the requirements of due process and does not violate the Civil Rights Act of 1964. See, pp. 1-A thru 10-A, infra.

The dissenting opinion of Chief Justice Wilentz (joined by Justice Pashman) challenges the majority opinion by finding that the State failed to show, under Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), that it would be unreasonable to require notice in the claimant's language in cases where simple notice of the right to appeal and time limit for action is all that is needed, thereby denying Appellant due process of law. See, 11-A thru 24-A, infra. The dissent also pointed to many other circumstances where the State has been routinely giving bilingual notice to claimants. See, p. 28-A n.12, infra.

Notice of Appeal to this Court was duly filed in the Supreme Court of New Jersey on July 26, 1982.

THE QUESTION IS SUBSTANTIAL

The issue presented by this appeal, whether a state may deny a Hispanic citizen her Fourteenth Amendment right of procedural due process solely because she does not speak English, affects a sizeable and rapidly increasing percentage of the nation's population.[1]

The importance of securing the right to receive a notice in conformity with the criteria set down by this Court in Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950) is inseparable from what this Court has described as the fundamental requisite to due process: the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

The risk incurred when non-English speaking Hispanic citizens are alienated from the judicial process is most alarming in a constitutional democracy. Although persons of Mexican and Cuban ancestry represent a significant portion of the nation's Hispanic population[2], the alienation is most egregious when Puerto Ricans are involved[3]. Puerto Ricans are all native born American citizens. The residents of Puerto Rico, however, speak primarily in Spanish. The local Courts in Puerto Rico

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[1]In 1970 there were 9,062,602 Hispanics in the United States representing 4.5% of the general population. In 1980 there were 14,605,000 Hispanics in the United States representing 6.4% of the general population.
U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population and Housing, Final Population and Housing Counts (1971), and 1980 Census of Population and Housing, Final Population and Housing Counts (1981) and 1980 Census of Population and Housing, Preliminary Reports, (1980) where final counts have not yet been published.

[2]Persons of Mexican origin comprise 60.6% of the Hispanic population while those of Cuban origin represent 6.6% of the Hispanic population. Id.

[3]Puerto Ricans comprise 14.5% of the nation's Hispanic population. Id.

conduct their business in Spanish. Should a Puerto Rican, having spoken Spanish all his life, travel to New Jersey, procure a job, pay unemployment insurance premiums, and suffer a dismissal because of some downturn in business; he would be unable to meaningfully present a claim for benefits to the New Jersey Departmentof Labor and Industry, Unemployment Claims Division.

He would not be apprised of the outcome of his claim. He would not understand his right to appeal an adverse determination. He would not know that a hearing on his claim must be scheduled upon his demand, and most significantly, he would have no idea of the time span wihtin which he needed to act. He may well know that the subject treated in the written English notice delivered to him must be investigated urgently, but cognizance of urgency is not synonymous with knowledge of an exact time limitation.

Does the Constitution permit a procedure of this sort, or must some correction be made to align the right with the needs of the recipient? The dissenting opinion in the Court below clearly articulates the reasons why a change in the procedure should be accomplished.

Chief Justice Wilentz stated:

> This result is clearly mandated by the due process guarantees of the Fourteenth Amendment of the United States Constitution. The majority cites Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 865 (1950), to reach a contrary result. But in fact, Mullane, provides the strongest support for the conclusion that Zoila Alfonso was not given notice of her right to appeal.

In the case at bar, the claimant diligently investigated her rights without assistance from the State apparatus. Appellant not only pursued her quest for a translation, but unlike other claimants who relied on translations by friends to their detriment[4], sought out a community agency to assist her. The translation came three days too late.

New Jersey has recognized the fact that some correction must be made and it has created bilingual forms to that end. Furthermore, at oral argument in the Court below, the State's attorney admitted that New Jersey faced no administrative burden in implementing use of the forms. In spite of this fact, the forms have not been distributed for use.

No prior case brought before this Court, on any aspect of bilingualism, has ever revealed such blatant governmental disregard for the rights of its citizens. The State's failure to implement the most effective tool to remedy this problem, a bilingual form, serves no state interest whatsoever while denying United States citizens meaningful access to the judicial process.

The majority below hints that minimal official use of a language other than English, even if in limited form for the purpose of safeguarding so precious a right as the right to due process, will somehow injure the character and infringe upon the sovereignty of the State. See, p. 8-A infra. In disallowing such use, the Court below acquiesces to the conduct of a State apparatus which holds the remedy, temptingly, in its hand.

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[4]See, Dalomba v. Director of the Division of Employment, Sec., 337 N.E. 2d 687 (Mass. 1975) and Hernandez v. Dept. of Labor, 83 Ill. 2d 512, 416 N.E. 2d 263 (Ill. 1981).

Demographics show that five states have a Hispanic population of greater than ten percent.[5] Four other states, including New Jersey, report that between five to ten percent of their residents are Hispanic.[6] From all indications these totals will continue to increase throughout the decade. Hispanics as a group will undoubtedly be encouraged, because of the allowance for individual potential which the United States Constitution protects, to contribute to the nation's prosperity. To carelessly deprive those lacking sufficient comprehension of the English language of their constitutional right to due process of law will seriously undermine the principles of justice, equality, and fundamental fairness for all.

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[5]New Mexico (36.6%), Texas (21%), California (19.2%), Arizona and Colorado (11.7%) make up this group. 1980 Census of Population and Housing, Final Population and Housing Counts (1981) See Note 1 supra.

[6]New York (9.5%), Florida (8.8%), New Jersey (6.68%) and Illinois (5.6%) make up this group. Id.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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DATED: July 24, 1982.